

1 behind the verbal commitment that I made to  
2 him years ago, however it's 2009, and the  
3 company needs to survive and move forward, and  
4 it's clear to me and others that are involved  
5 with the company that, in order to move  
6 forward in any capacity, that we're going to  
7 have to sever ties.

8 Now, we've tried to, you know,  
9 negotiate with him to allow the company to  
10 move forward, and he is not interested, and  
11 has taken a very combative stance in reference  
12 to stock being issued to him.

13 But, at the same time, his trust  
14 is still not ready to receive any such stock,  
15 so --

16 Q Why isn't it ready?

17 A Probably because he hasn't paid  
18 his trustee and --

19 Q How do you know it's not ready?

20 A Recently saw -- an email was sent  
21 to me when he was jawing with somebody else  
22 about the issue and --

1           Q     But it's still -- is it fair to  
2 say that it's no longer tied to the issue of  
3 a trust for Jay Bishop? I mean, Jay Bishop is  
4 now out of the picture; is that not correct?

5           A     Yes. Jay, you know, hasn't worked  
6 for the company in many, many years, and Jay's  
7 --

8           Q     So if there's an impediment to the  
9 trust, it's not that Jay Bishop didn't sign  
10 the trust at some point?

11          A     Yes. I mean, yes.

12          Q     It's no longer that, right?

13          A     Yes. I mean, that was, you know,  
14 a situation that I wanted resolved right  
15 before the auction, but now we need to pull  
16 the trigger on one or the other.

17               Jay understands that his  
18 involvement with the company would be  
19 detrimental and so whatever works best for the  
20 company is, he's -- he's good with whatever we  
21 need to do, and compensating him or whatever  
22 needs to happen so the company can move

1 forward.

2 Pen, not so much.

3 Q Okay. Well, so, where do things  
4 stand with Jay Bishop in terms of his  
5 compensation?

6 A We reached an agreement with him  
7 to take a reduction from 800,000 to 250,000,  
8 and take it in the form of -- of warrants in  
9 the company as opposed to stock, and that if  
10 he were to own any stock, that it would need  
11 to be approved by the FCC.

12 Q Okay. But, so in other words,  
13 that deal is still in the offing and it's just  
14 waiting for approval by the FCC?

15 A Yes.

16 Q And what would you anticipate  
17 filing to get that approval for Jay Bishop,  
18 not Pendleton Waugh? You weren't talking  
19 about that, but what would you be filing to --  
20 to, you know, get that approval from the FCC  
21 for Jay Bishop?

22 A I'm not too sure --

1 Q Well, in other words, you're  
2 talking to -- we're talking about --

3 A If he wants -- if he's going to  
4 own stock, he's going to have to file for  
5 approval, and -- to own stock in the company.  
6 I don't know what that filing is.

7 Q But you would be looking to him to  
8 make the filing as opposed to the company --

9 A Well, we'd do it jointly or  
10 whatever. We haven't gotten to that stage and  
11 I don't know the procedure.

12 Q Okay.

13 A I'm not an FCC attorney, but I've  
14 talked with David about what would need to get  
15 done.

16 Q Okay. Yes, I believe you've  
17 answered the question but in this case how do  
18 warrants differ from stock, actually from  
19 stock? I mean, what would be the conditions  
20 on warrants that would make them different  
21 than stock?

22 A Warrant is the right to purchase

1 stock in the future.

2 Q At a specific price?

3 A Yes.

4 Q And I had a question in mind that  
5 was about Pendleton Waugh, but I guess I'll  
6 have to hope it pops back in.

7 Is it your statement that Smartcom  
8 is still working on behalf of PCSI?

9 A No.

10 Q Okay. And when did that end?

11 A It ended shortly after the  
12 auction.

13 Q The auction in 2000, you mean?

14 A No.

15 Q I'm sorry. The 73 --

16 A 2008. Yes, I mean, May. April,  
17 May.

18 Q Of 2007?

19 A Yes.

20 Q Okay. You alluded to what they  
21 did for PCSI. Could you give us a little bit  
22 more detail about what Smartcom did.

1           A     They worked with the finders and  
2 investors, updating, communicating with  
3 investors.

4           Q     So was there a position as -- of a  
5 consultant, in effect?

6           A     Yes. Yes.

7           Q     Or were you actually contracting  
8 services with them, which I guess you could  
9 call a consultant.

10          A     Yes.

11          Q     To contract the services to  
12 oversee the finders and other services that,  
13 you know, PCSI needed?

14          A     That's correct.

15          Q     Now, in relation to the licenses,  
16 this again is the site-by-site licenses --  
17 Hopefully I'm almost done. I am almost done.

18                 In relation to those site-by-site  
19 licenses which you indicated stopped operating  
20 in 2002, did you or anyone else at PCSI ever  
21 file with the Commission for permission to  
22 discontinue operations?

1 A No.

2 Q Can you tell me why? Or, why not,  
3 I should say.

4 A I should have, but didn't file.

5 Q You should have done it --

6 A Yes.

7 Q -- but you just did not?

8 A Yes. There was a lot going on  
9 and, no.

10 Q Was -- I'm sorry to skip around  
11 like this, but was VentureTel a sub of PAI or  
12 of PCSI?

13 A PCSI.

14 Q Did there come a time when those  
15 licenses, the ones we're talking about now,  
16 the ones which were discontinued operation,  
17 did they ever resume operation after the  
18 discontinuance? Do you know?

19 A No.

20 Q Okay. And did you ever fail to  
21 renew one of these site-by-site licenses?

22 A Several we let expire because they

1 were duplicative.

2 Q Duplicative in what way?

3 A We own it within -- with the EA  
4 license.

5 Q Okay. And was there some  
6 advantage to doing it that way, letting it  
7 expire? Or, I should put it the other way.  
8 Was there any advantage in keeping it?

9 A Well, probably, you know, I filed  
10 with the Commission to -- to hand it back in,  
11 turn them over or whatever. We just -- other  
12 auction licensees terminate the licenses. We  
13 just let them expire when they expired.

14 Q Okay. But with the idea that you  
15 weren't actually losing any spectrum by doing  
16 that?

17 A That's correct.

18 Q Did you ever set up a -- or did  
19 you have any necessity of setting up a stock  
20 trust or a trust such as the one that was  
21 contemplated or which was done for Pendleton  
22 Waugh, for yourself?



1 A No.

2 Q Give me just a second. I'm almost  
3 done. Do you know if -- I know we had some  
4 question about this, but do you know whether  
5 in -- through either the LOIs or the  
6 interrogatories or the request for production,  
7 whether all of the leases that were necessary  
8 for PAI spectrum, in other words, what was  
9 necessary to show readiness, do you know  
10 whether all of those leases were forwarded to  
11 the Commission? Produced -- I shouldn't say -  
12 - produced to the Bureau is what I should say.

13 A I believe so, yes.

14 Q Okay. Do you know how long that  
15 PAI or PCSI made payments under these lease  
16 agreements? In other words, you submitted the  
17 lease agreements and other operational  
18 information with the waiver request; is that  
19 correct?

20 A Say that again.

21 Q When you made your submission for  
22 your waiver request, you submitted copies of

1 the leases, did you not?

2 A Yes.

3 Q Okay. And what else did you  
4 submit? You talked about it briefly. I just  
5 wondered. Did you --

6 A Equipment and -- a host of stuff.  
7 I don't --

8 Q And was the equipment leased  
9 equipment, or was it stuff that was bought  
10 outright?

11 A It was -- yes, it was stuff that--  
12 it was our own equipment.

13 Q Your own equipment. And as far as  
14 the lease agreements go, do you know how long  
15 payments were made on those leases? Are they  
16 still being made on some of them?

17 A No, they were two-year leases, and  
18 so that it would have expired by now, and we  
19 didn't renew. We haven't heard back on the --  
20 never heard back on the waiver and now we're  
21 in the middle of an administrative hearing, so  
22 it --

1 Q Yes. So -- Yes, I understand  
2 that. But in regard to the leases that you  
3 submitted and admittedly some were a couple of  
4 weeks late, but how long did PCSI make  
5 payments on those leases?

6 MR. OSHINSKY: We can go off the  
7 record for a second.

8 (Whereupon, the above-entitled  
9 matter went off the record at 2:45 p.m. and  
10 resumed at 2:46 p.m.)

11 MR. OSHINSKY: We can go back on  
12 the record. I have just a few more questions.  
13 BY MR. OSHINSKY:

14 Q All right. We said -- we said  
15 that waiver request is still pending. And is  
16 it your statement that PAI basically ran out  
17 of money in order to continue making the  
18 payments necessary for those leases?

19 A That is correct, yes.

20 Q And the whole rebanding  
21 proceeding, which I think you referred to as  
22 the Dark Ages, has that changed the way that

1 PCSI and PAI are currently being marketed to  
2 investors? Are they still being marketed to  
3 investors?

4 A Yes. It's a very -- it's very  
5 tough because the uncertainty of the outcome  
6 of this proceeding. It's very similar to the  
7 uncertainty of the outcome of 800 MHz  
8 rebanding proceeding.

9 So, yes, it's a significantly  
10 different presentation.

11 Q As things stand, and you've  
12 testified a little bit about the current plan  
13 for the rebanding, if things go through as  
14 planned under the current plan that's in place  
15 for the rebanding, what does PCSI/PAI, where  
16 do they end up at the end of that?

17 A You know, it depends on what  
18 market and it depends on how we construct.

19 Q How you construct?

20 A Yes.

21 Q In other words, is your original  
22 plan for the company still feasible, depending

1 on what is the -- are there too many variables  
2 involved to say whether that original plan is  
3 still viable or not?

4 A Well, it depends on what happens  
5 in Puerto Rico. I don't know if you're  
6 familiar, but Puerto Rico was the one market  
7 that was not settled or determined by the end  
8 of 2004. In fact, it's still going on.

9 We submitted a filing back in --  
10 several months ago in reference to that.

11 Q So, is this a -- so it's fair to  
12 say it's still an open question whether you  
13 can proceed with the plan --

14 A Well, I mean, it's -- it's I think  
15 that the best case scenario for Preferred  
16 would be that they treat Puerto Rico much the  
17 same way they treat the markets for Southern  
18 Link on spectrum.

19 Q Which would be how?

20 A They extended the commercial  
21 section of the band to accommodate for the  
22 fact that there's another company other than

1 Nextel that owns a large number of EA  
2 licenses.

3 Q Okay. And that's still in the --  
4 that's still a matter that's in flux?

5 A Yes.

6 Q To your understanding.

7 A If it's a pro rata, it's still  
8 feasible predicated on, you know, making  
9 purchases down there of spectrum.

10 Q But if that's the case then why  
11 was there so much consternation other than the  
12 fact that obviously there's a delay  
13 necessitated? Why was there so much  
14 consternation about the possible spectrum that  
15 PCSI might receive, or PAI might receive in  
16 exchange?

17 You indicated previously that this  
18 threw a huge roadblock, which I understand,  
19 but you also seemed to indicate that you  
20 didn't know what spectrum you were going to  
21 end up with, and therefore you didn't know  
22 whether -- whether your business plan was

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1 possible or not, or is that -- was my  
2 understanding incorrect?

3 A I think it is --

4 Q Okay.

5 A -- but you're jumping around on a  
6 lot of these --

7 Q Well, I'm trying to thread them  
8 together.

9 A Okay.

10 Q You're telling me now that the  
11 question of Puerto Rico's spectrum and what  
12 might be exchanged, what you might ultimately  
13 end up with in Puerto Rico is in flux,  
14 correct?

15 A Yes.

16 Q Okay.

17 A But no so much in flux as it was  
18 at the end of 2004, or prior to the -- prior  
19 to the ruling coming down.

20 Q Okay. And what's the difference?

21 A Well, the -- for the longest time  
22 the rebanding plan was putting Preferred into

1       *noncellular portion of the band.*

2               Q       Okay.

3               A       And so when the plan came out in  
4       2004, it allowed us to go into the cellular  
5       portion of the band, although Puerto Rico  
6       hadn't been completely settled out. It kind  
7       of set that aside and -- you know, to deal  
8       with it later, so -- but right now we're, you  
9       know --

10              Q       Is it that chances are you could  
11       still end up with the cellular portion of the  
12       band?

13              A       Yes. Yes.

14              Q       Is it likely or is it just as  
15       likely as not?

16              A       No. It's, you know, based on  
17       building an enhanced isomer system, and you  
18       can be in the cellular portion of the band.

19              Q       Okay. Has anybody associated with  
20       PCSI ever built such a system?

21              A       An isomer system?

22              Q       Yes.



1           A     People I'm working with have, over  
2     the last several months have -- no. I mean,  
3     aside from Alex Calderon who does public  
4     safety and --

5           Q     Has he built, constructed such a  
6     system?

7           A     I'm not sure. I mean, he's an  
8     engineer, project manager, you know, manages  
9     projects and I'm --

10          Q     Do you know that he has specific  
11     expertise with that?

12          A     Well, he's -- he was part of  
13     building the very first cellular system in --

14          Q     You presume he could do it, even  
15     though you don't know for certain?

16          A     That he could build a system?

17          Q     Yes.

18          A     Yes, I mean, building it, there's  
19     any number of firms that will build you a  
20     system.

21          Q     What about utilizing the iDEN  
22     technology, is that still a part of what your

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1 plan is?

2 A That's a question really to be  
3 resolved at the time we could ever get a  
4 waiver, survive --

5 Q That's what I --

6 A -- as a company. But what  
7 happened through this whole process, of  
8 course, as you know, the -- that environment  
9 has changed. We would much rather move to new  
10 technology and a combination of an 800 and 700  
11 meg system.

12 Q What would that be, if it has a  
13 name? Something that -- is it something along  
14 the lines of what Verizon does, or is it  
15 different?

16 A Yes. EBDO Rev-A is, you know,  
17 good technology. We've looked at several, but  
18 we haven't -- you know, we're not spending a  
19 lot of money and time in -- in meeting with  
20 the different vendors at this point.

21 Q And I take it any of those would  
22 operate as well, as far as you know, as iDEN

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1 would for what you have in mind?

2 A Yes. There's -- you know, one of  
3 the great advantages of iDEN was the, you  
4 know, push-to-talk.

5 Q Push-to-talk.

6 A And I still think that that  
7 feature down in Puerto Rico is -- is a very  
8 good application, and I still think that  
9 application is good application. I don't  
10 think Sprint understands it as well as Nextel  
11 did, and treated it the way it should have  
12 been, but there's --

13 Q I would ask you what exactly do  
14 you mean by that, but I don't want to stretch  
15 this out ad infinitum. I'm not sure of that.  
16 Let me move on to my last couple of questions.

17 Was PAI ever in what the  
18 Commission calls red-light status with the  
19 Commission? Do you know what red-light status  
20 is?

21 A No.

22 Q So your answer is you don't know

1       *whether they were in red-light status or not?*  
2       That's a specific term of art. If you don't  
3       know, you don't know.

4               A       No, I don't.

5               Q       Okay. Did -- to your knowledge,  
6       did PCSI or PAI have a responsibility or an  
7       obligation to file federal or state tax  
8       returns annually?

9               A       Yes.

10              Q       And did they file those?

11              A       No.

12              Q       Is there a specific reason why  
13       they didn't?

14              A       Lack of funding, getting behind,  
15       catch up. They are currently being worked on  
16       and we have a tax expert, Richard Stanczyk,  
17       who's working with the IRS to bring them  
18       current.

19              Q       Did PCSI or PAI pay any franchise  
20       taxes, if you know?

21              A       Yes. The Delaware franchise taxes  
22       have been paid.

1 Q And do you know where -- what  
2 states they were paid in, in what state they  
3 were paid in?

4 A I'd have to double-check with  
5 Linda, but she works closely with corporate  
6 counsel and the accountants to make those  
7 payments.

8 Q And do you know whether PCSI or  
9 PAI is in good standing, whether their charter  
10 is in good standing at this point?

11 A It is.

12 Q And that would be only where? Or  
13 where? Where would it be?

14 A In Delaware.

15 Q Delaware. Do you know whether  
16 PCSI/PAI ever paid payroll taxes or interest  
17 and penalty on payroll taxes?

18 A We paid some. We are working with  
19 EDD in California to resolve. That was  
20 actually the phone call that came in from  
21 Richard today.

22 Q And EDD being the tax division of

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1 the --

2 A Yes.

3 Q -- California State Government?

4 A Yes.

5 MR. OSHINSKY: Off the record for  
6 a second.

7 (Whereupon, the above-entitled  
8 matter went off the record at 2:57 p.m. and  
9 resumed at 2:58 p.m.)

10 DIRECT EXAMINATION

11 BY MS. SINGH:

12 Q Before I begin my line of  
13 questioning I just want to make sure you don't  
14 need any breaks or anything like that.

15 A No, I'm good.

16 Q Okay. When Gary Oshinsky, my co-  
17 counsel was asking you when Smartcom ended its  
18 association with PCSI and stopped working with  
19 them, I believe that you said it was April or  
20 May of 2007. Did you mean 2008?

21 A Well, yes, I did.

22 Q Okay. Thanks. We've got a bunch

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1 of documents in this record. I'm sure you,  
2 better than anybody, know that we've got a  
3 high volume of those.

4 So, for my segment of the  
5 questions we're going to focus on select  
6 documents and I'm going to ask you about them.  
7 Usually I'll, you know, have them coming in  
8 based on where I've received them, and they're  
9 chronologically organized within that set.

10 So, I'm going to give you a copy.  
11 I'm going to give some copies to the court  
12 reporter and, you know, to the extent that you  
13 haven't seen something before we can decide at  
14 that point whether to walk through it or  
15 whether to move on.

16 A Okay.

17 MS. SINGH: For the court  
18 reporter's reference, I'm about to start a  
19 portion of the record which will deal with  
20 documents that are confidential or which will  
21 touch upon discussion of other documents that  
22 are confidential.

1           So, at this point, I would ask  
2           that the court reporter seal the transcript of  
3           this proceeding.

4           (Whereupon, at 2:59 p.m. the  
5           taking of deposition adjourned and continued  
6           in a sealed transcript under separate cover.)  
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